

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 02-11909-RWZ

GARY J. COLASSI

v.

CYBEX INTERNATIONAL, INC.

MEMORANDUM OF DECISION

July 7, 2004

ZOBEL, D.J.

This case concerns the alleged infringement of a patent for a “Treadmill Belt Support Deck,” United States Patent No. 6,123,646 (“the ‘646 patent”). Claim 1 of the ‘646 patent describes “a flexible hinge yieldingly connecting one end of the planar member to the anchor means and adapted to resiliently absorb the shock of treading normal to and along the upper course,” and Claim 11 describes “a flexible hinge resiliently connecting one end of the planar member to the anchor means.” In a memorandum dated February 27, 2004, this Court construed the claim term “flexible hinge” to mean “[t]he part of the deck between the anchor means and rigid planar member that allows the rigid planar member to give way under physical force (i.e., the forces caused by a user’s full tread motion).”

At a hearing on defendant’s motion for summary judgment held on June 10, 2004, defendant contended that the Court’s construction of “flexible hinge” was in fact a construction of the entire claim limitation, so that the hinge no longer had to connect “one end of the planar member to the anchor means.” Five days later, defendant expanded on its contention in a letter to the Court. It is therefore necessary to explain that counsel has misinterpreted the Court’s claim construction.

Defendant's claim construction brief made two arguments with respect to "flexible hinge": first, that it was "structurally separate" from the planar member and the anchor means, and second, that it should be limited to the preferred embodiment. Although defendant notes that it sought construction of the entire claim limitation, the substance of its brief boiled down to the construction of "flexible hinge." Plaintiff quite properly focused its response on "flexible hinge," and the Court agreed with him that the hinge is neither structurally separate nor limited to the preferred embodiment. In essence, the Court adopted plaintiff's definition of "flexible hinge," and the Court's construction was labeled as a definition of the words "flexible hinge," nothing more.

The location of the flexible hinge was never at issue. Neither party argued that the flexible hinge did not connect one end of the planar member to the anchor means. It was unreasonable for counsel to interpret the Court's construction in a way that is completely disconnected from the Markman record and plainly contrary to the "words of the claims themselves." Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). The "flexible hinge" is indeed located between the planar member and the anchor means, and as the rest of the claim language indicates, it connects one end of the planar member to the anchor means.

Given that defendant's summary judgment motion is largely based on its erroneous interpretation of the Court's claim construction, defendant shall notify the Court by July 21, 2004, of how it wishes to proceed.

DATE

/s/ Rya W. Zobel

RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE